



THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

REQUEST FOR PRESIDENTIAL EMERGENCY DECLARATION TRIBAL PRESIDENT'S REQUEST

October 2, 2015

The Honorable Barack Obama
President of the United States
The White House
Washington, D.C.

Through: Elizabeth A. Zimmerman
Associate Administrator
Office of Response and Recovery
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20472

Dear Mr. President:

Under the provisions of Section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206, (Stafford Act), and implemented by 44 CFR § 206.35, the Navajo Nation ("the Nation") respectfully requests an Emergency Declaration for the Navajo Nation due to the Gold King Mine spill of toxic mine wastes ("the Spill") on August 5, 2015. This Request describes and discusses the severity and magnitude of the Spill, the immediate and concentrated actions taken by the Nation and other agencies to alleviate the impact of the Spill, and we request FEMA to help us identify the types of federal assistance that would best support life sustaining and property protection and public health and safety requirements.

On August 5, 2015, a contractor hired by the United States Environmental Protection Agency ("USEPA") was completing mine work using heavy equipment on a closed opening to the Gold King Mine ("the Mine") in Silverton, Colorado. The closed opening to the Mine was ruptured. This rupture spilled three million gallons of toxic mine wastes into Cement Creek. The massive release of toxic contaminants included lead and arsenic. From Cement Creek, the toxic contaminants flowed into the Animas River and the San Juan River. The San Juan River runs

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along the northern border of the Navajo Nation for approximately 250 miles. Thus, the Spill flowed along the entire distance of 250 miles and directly impacted 13 Navajo Chapters.¹

The immediate actions taken to contain the effects of the Spill by the Nation and federal and state agencies are described in the Nation's Request for an Extension dated September 3, 2015. *See Exhibit A.* The Navajo Nation Commission on Emergency Management declared a state of emergency on August 9, 2015, CEM 15-08-09. *See Exhibit B.* The Nation's Department of Emergency Management activated the Emergency Operation Center ("EOC") on August 9, 2015.

One impact of the Spill was the immediate public reaction in the affected communities that the water provided by the Navajo Tribal Utility Authority could not be trusted to be pure and uncontaminated. The people in the affected communities believed that only bottled water could be trusted to be drinkable. Almost twice as many households began using only bottled water after the Spill despite the costs involved to the families. *See Exhibit C, excerpt only.* Because the number of retail stores is limited on the Navajo Reservation, persons drove considerable distances to towns bordering the Reservation such as Farmington NM, Cortez CO, and Blanding UT to purchase drinking water and water for other daily uses such as cooking and cleaning. The costs incurred from this additional travel to purchase water constituted financial burdens on affected families, especially so in light of the poverty level on the Reservation.² Some of these families also had to haul water for their livestock and to irrigate their fields.

Another impact of the Spill was the adverse effect on the existing farming industry along the San Juan River. Since the Spill, Navajo farmers have had limited access to irrigation water. Many Navajo families utilize the San Juan River to grow and irrigate various types of crops (corn, melons, vegetables, orchards, and gardens). The crops differ in planting to produce ratio as well. For example, alfalfa hay is seeded once and produces hay for approximately three cuts a season and will produce for 5 years on one seeding rotation. Farmers have had to haul water to and from established water tank locations; thereby incurring expenses for hauling materials, gas, mileage, and labor costs. *See Exhibit E, which summarizes damages to crops (Table 1) that became wilted, dried up, or died, and Table 2 reports the costs incurred by farmers and ranchers who had to purchase and deliver water and hay.* In addition, many farmers are confronted with

¹ Navajo Chapters are local government units that are comprised of one to several communities.

² The poverty rate on the Navajo Nation is 38%. Thirty-four percent of Navajos between the ages of 18 and 64 live in poverty. *See Exhibit D, excerpt only.*

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elevated water utility bills from area companies as a direct result of using their main domestic water lines to irrigate their farms as a last effort to save their crops and gardens. Farmers and their families rely on their crops for consumption and, often, as a sole source of family income.

The adverse impact of the Spill on livestock water also necessitated emergency measures to be taken by Navajo ranchers whose cattle, horses, sheep, and other livestock range along the San Juan River. When the Spill occurred, many ranchers rounded up their livestock and placed them in corrals as a safety measure. This safety measure caused Navajo ranchers to incur additional costs associated with obtaining hay, feed, hauling water, and purchasing water troughs and water barrels. *See Exhibit E.* The adverse impact of irrigation water also caused hardship to those ranchers who also grow alfalfa hay as feed for their livestock.

Last, but not least, the long-term impact to the health, safety, and welfare of the Navajo people in the affected communities has been detrimental. Data collected by the USEPA and the Navajo Nation Environmental Protection Agency (“NNEPA”) shows that the chemicals and elements in the San Juan River include pollutants such as lead arsenic, mercury, beryllium, cadmium, and chromium. The measured levels of these toxins exceeded the Nation’s Water Quality Standards for Irrigation, Livestock, and Drinking Water. *See Exhibit F.* The life-giving and life-sustaining benefits of the San Juan River have been severely impacted. The Navajo People’s use and reliance of water from the San Juan River for subsistence farming, livestock raising, and Ceremonial uses have been interfered with by contamination. Many Navajo families now are worried whether the sheep which they consume in daily meals may have become contaminated with the chemicals and elements they have heard about from the news media. Families also are dealing with the stunted growth and, even the death, of crops that they had counted on to harvest. Consequences are also indicated in the mental health of persons in the affected communities. Approximately 15.7% of impacted households that have been surveyed by Navajo Division of Health’s Epidemiology Center have reported experiencing illness since the Spill including nausea, stomach ache, diarrhea; and 37.9% reported having emotional and spiritual concerns about the Spill. *See Exhibit C.* The above paragraphs have only briefly and generally summarized the adverse impacts of the Spill that are known or indicated at this time.

We now describe the actions taken by the Nation, federal and state agencies, and organizations to respond to the adverse effects of the Spill.³ USEPA deployed an On-Scene Coordinator on a weekly rotating basis to provide assistance in mitigating the impact of the release of heavy

³ Please review also the actions described in the Nation’s September 3, 2015 Request for an Extension letter.

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metals into the San Juan River. NNEPA conducted river water samplings, contracted testing services, reassigned personnel to the Spill response, and it has been the key contact to the USEPA for correspondence regarding river data.

EOC has been coordinating the collaborative actions of many entities. The Community Emergency Response Teams and the Navajo Division of Health Community Health Representatives have been distributing donated bottles of water to supplement consumption needs. The American Red Cross, Digital Air Strike, Healthy Active Natives, Miss Southern New Mexico, Navajo Church of Christ, San Juan County, Utah Food Bank, Walmart, and Young Marines have donated more than 56,000 gallons of water to the affected communities. *See* Exhibit G. The Navajo Forestry Department donated three galvanized steel water storage tanks which were set up in Navajo Mountain AZ, Mexican Water UT, and *Gadiiahi* NM. *See* Exhibit H. The Colorado River Indian Tribes donated 230 tons of hay. The Navajo United Way has received \$68,776.88 in monetary donations to assist the affected Navajo communities. *See* Exhibit I. The Nation is processing the paperwork to purchase grain, salt blocks, 50-gallon water barrels and water troughs with these funds.

Thirteen Navajo Chapters have been directly affected by the Spill—primarily in restrictions on the use of water from the San Juan River. Exhibit J summarizes the responses coordinated by EOC to Chapter calls for assistance because of the impact of the Spill. Since the Spill, the USEPA and the Bureau of Indian Affairs (“BIA”) have provided water for livestock to the affected communities. In collaboration with the EOC, BIA has strategically placed seven water tanks in areas with the highest need for livestock water. Thirteen water tanker trucks hauled water to seven of the 13 Navajo Chapters. Although the water was intended for livestock use, many community members also used the water for irrigation purposes. As of August 31, 2015, the BIA had distributed 975,888 gallons of water through its Water Hauling Operation. BIA assisted with water delivery from August 15 through September 5, 2015. *See* Exhibit K. The Navajo Agricultural Products, Inc. had provided, at its peak, 400,000 gallons of water per week to the Hogback and Shiprock Chapters; however, this water delivery has been reduced to 250,000 gallons per week.⁴ This water is being transported by the Navajo Department of Transportation.

⁴ Pursuant to telephone conversations on the update of water delivery between Rose Whitehair and Jeremy Simpson of the Navajo Agricultural Products, Inc.

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Many Navajo Nation Government programs contributed personnel and other resources in a cooperative and coordinated response to dealing with the consequences of the Spill. Their contributions are briefly enumerated below, and the associated costs to provide this response are summarized in Exhibit L.

- Department of Water Resources assisted the BIA in the delivery of water and equipment for water delivery.
- Division of Community Development provided personnel to help staff EOC.
- Department of Human Resources temporarily hired employees to help staff EOC.
- Division of Social Services diligently conducted community outreach and trauma mitigation in the affected communities.
- Division of Public Safety provided security services to USEPA as its staff conducted river testing, safeguarded the water tank sites, and staffed the Kayenta and Shiprock Incident Command Posts.
- Division of General Services provided information technology resource connections and sustenance for EOC staff.
- Division of Health assisted in completing community assessments, staffing the Shiprock Incident Command Post, providing information door-to-door in the affected communities, completing bottled water deliveries to Chapters, and staffing EOC.
- Department of Agriculture conducted crop and livestock assessments including livestock blood testing, conducted door-to-door surveys, provided livestock feed guidelines, and coordinated hay deliveries with the Navajo Agriculture Products Industry. The Division also sponsored Farm Board and Grazing Committee Meetings to educate these Navajo officials about how to effectively assist farmers and ranchers in their communities.
- Department of Transportation assisted in providing water tank delivery, fuel, Personal Protective equipment, signage, and draining water tanks. It also provided field personnel and drivers and contracted assistance and equipment for water delivery to established water stations.
- Navajo Occupational Safety and Health assisted both field and EOC Staff by providing safety documentation and recommendations and safety plans to field and EOC staff.
- Department of Finance assisted EOC by establishing an emergency response account to expedite funds availability to support the response efforts.

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In addition, the Navajo Nation Council has assisted in educating the Navajo public by holding community meetings that provided information on the Nation's response to the Spill. The Office of the President and Vice-President ("OP/VP") has dedicated countless hours conducting informational community meetings, developing strategy in Executive Branch meetings, providing OP/VP personnel to assist at the EOC, and by donating sustenance to the many responders. EOC is currently coordinating resource requests from the impacted Navajo Chapters and is also working to ensure all response efforts are appropriately documented and archived.

In the approximate past 12 months, the Nation had to respond to two disasters, described briefly below. *See* Exhibits M1 and M2 . Given these prior disaster events and the large-scale immediate response activated to deal with the consequences of the Spill, the Nation's capacity to continue and to expand its response to this emergency is near exhaustion.

CEM 15-03-04. March 5, 2015. Declaring a State of Emergency for severe inclement winter weather, conditions of heavy snow, high winds, excessive rain, flooding, power outages and subsequent mud conditions, impacting approximately 80 Chapters. Nation monies funded disaster relief to about 40 non-New Mexico Chapters. For the Chapters in the New Mexico sector of the Reservation, the Nation was awarded two Subgrants (FEMA-4148-DR-NM in amount of \$291,190 and FEMA-4152-DR-NM in amount of \$1,405,300) through the New Mexico Department of Homeland Security and Emergency Management.

CEM 14-06-16: Declaring a State of Emergency for the *Asaayi* Lake (Bowl Canyon) Fire, burning more than 14,000 acres and impacting six chapters, incurring more than \$6,000,000 in damages and response measures. Funds, personnel, and equipment were primarily provided by the BIA and the U.S. Forest Service.

In accordance with Section VI(A)(1) of the FEMA Disaster Assistance Policy 1004, the Nation has elected to respectfully request FEMA's assistance to assess, identify, and validate the Nation's needs through a preliminary damage assessment. Our formal Request for Preliminary Damage Assessment, dated October 1, 2015, has been submitted separately to FEMA. *See* Exhibit N. We believe that if FEMA personnel were to come on-site to observe and assess first-hand the consequences of the Spill and to speak directly with the farmers, ranchers, and other community people, it could effectively apply its expertise to assess damages and formulate

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recovery strategies and measures. Direct communication with Navajo farmers, ranchers, and families and direct observations of the San Juan River and affected lands would enable FEMA personnel to better understand the cultural and spiritual impact of the Spill. Traditional Navajo World View teaches Reverence and Spiritual Reliance on the land, water, livestock, and crops. It teaches the vital necessity of maintaining the purity and harmony of land, water, livestock, and crops. For these reasons, the consequences of the Spill affected, and continue to affect, Navajo communities in ways significantly and substantively different from that which might have been experienced by non-Navajo communities.

The Nation certifies that, for the current emergency, it will comply with all applicable cost-sharing requirements of the Stafford Act. The Request for Emergency Declaration⁵, the Exhibits, and the Emergency Declaration form, *see* Exhibit O, show that the Navajo Nation, by itself, does not have the resources to effectively respond to this emergency. Therefore, the Navajo Nation respectfully requests your favorable consideration of our request for emergency relief under Section 501 of the Stafford Act. If you have any further questions or need clarification regarding this letter, please contact me at (928) 871-7915 or Ms. Rosalita Whitehair of the EOC at (505)-371-8416/8417 for technical questions. We look forward to your favorable decision.

Sincerely,

THE NAVAJO NATION


Russell Begaye, President


Jonathan Nez, Vice-President

⁵ Because we are not applying for Major Disaster Assistance, we have not included the Major Disaster Request Enclosures A through D.

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Exhibits:

- A: Request for an Extension to Submit the Navajo Nation Request for Emergency Declaration dated September 3, 2015
- B: CEM 15-08-09. Navajo Nation Commission on Emergency Management Declaration of Emergency relating to the Gold King Mine Spill.
- C: Community Assessment for Public Health Emergency Response
- D: Demographic Analysis of the Navajo Nation
- E: Navajo Nation Department of Agriculture Emergency *To-Litso* Operation
- F: San Juan River Water Quality
- G: Out-Going Donations
- H: Navajo Forestry Department Memorandum dated September 28, 2015
- I: Wells Fargo Account Activity: Donations to Navajo United Way
- J: Chapter Requests
- K: BIA Water Hauling Data
- L: Expenditures—Navajo Nation Divisions, Departments, and Chapters
- M1: CEM 15-03-04. Navajo Nation Commission on Emergency Management Declaration of Emergency relating to Inclement Winter Weather Conditions
- M2: CEM 14-06-16. Navajo Nation Commission on Emergency Management Declaration of Emergency relating to *Assayii* Lake (Bowl Canyon Fire)
- N: Request for Preliminary Damage Assessment dated October 1, 2015
- O: Emergency Declaration Form OMB NO. 1660-0009